

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 31.08.2016

Pronounced on : 02.09.2016

CORAM

The Hon'ble Mr.Justice **M.V.MURALIDARAN**

**CRP(PD)No.28 of 2014
and
M.P.No.1 of 2014**

R.Kaleeswaran

.. Petitioner

Versus

1.R.Samundeeswaran

2.P.Ramanathan

3.R.Govindammal

4.Savithiri

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the Fair and Decretal Order of dismissal dated 26.11.2013 passed in I.A.No.3522 of 2013 in O.S.No.6549 of 1996 on the file of VIII Assistant Judge, City Civil Court, Chennai.

For Petitioner : Mr.N.Jayabalan
For Respondents : Mr.A.V.Arun (for R1)
R2 to R4 – Given up.

ORDER

This Civil Revision Petition has been filed against the Fair and Decreetal Order of dismissal dated 26.11.2013 passed in I.A.No.3522 of 2013 in O.S.No.6549 of 1996 on the file of VIII Assistant Judge, City Civil Court, Chennai.

2.The Civil Revision Petitioner who is a third party to the suit in O.S.No.6549 of 1996 on the file of VIII Assistant City Civil Judge at Chennai filed an application in I.A.No.3522 of 2013 to implead himself as a defendant in the said suit, on the ground that he is the absolute owner of 5/6th undivided share in the suit property by virtue of a settlement deed dated 31.10.2012 executed by his father in his favour.

3.According to the Civil Revision Petitioner, the suit property being House, Ground and Premises bearing Plot No.15, Door No.8,

Somasundaram Devar 4th Street, Ayanavaram, Chennai – 600 023, measuring about 2400 Sq. ft. originally belonged to one Ramanujulu Maistry and his wife R.Govindammal they having purchased the same from one Hariputhra Naicker under a sale deed dated 15.09.1945 registered as Document No.1346/1945 in Bk I in the office of Sub Registrar, Sembiam.

4.By virtue of the said purchase, said husband and wife had equal rights in the suit property. It is further averred in the affidavit in support of the impleading petition, that the husband Ramanujulu Maistry died intestate on 13.02.1963 leaving behind his wife R.Govindammal, son Samundeeswaran and daughter Savithiri. All the said legal heirs have become entitled to 1/3rd share out of ½ share of deceased Ramanujulu Achari. Govindammal wife of deceased have become entitled to 1600 sq. ft. out of 2400 sq. ft. Samundeeswaran and Savithiri have become entitled to remaining extent. It is further alleged that Govindammal and her daughter Savithiri have jointly sold an extent of 2000 Sq. ft. of undivided share in the property to one Mr.R.Ramanathan (the first defendant in the suit) under a sale deed dated 05.02.1990 registered as Doc.No.579/1990 in Bk I in the office of Sub Registrar, Anna Nagar. The said purchaser R.Ramanathan through his Power Agent

A.Srinivasan sold the property purchased by him to one Mariammal under two registered sale deeds dated 27.04.2011 registered as Doc.No.2359/2011 and 2360/2011 in Bk I in the office of Sub Registrar, Anna Nagar. The said Mariammal in turn sold the same to petitioner's father under a sale deed dated 16.02.2012 registered as Doc.No.568 of 2012 in Bk.I in the office of Sub Registrar, Anna Nagar. The petitioner's father settled the property in favour of the petitioner herein under a settlement deed dated 31.10.2012 registered as Doc.No.3693/2012 in Bk.I in the office of the Sub Registrar, Anna Nagar.

5.The petitioner called upon the first respondent herein to arrange for partition of the property. The first respondent sent a reply stating that he had filed the present suit for various reliefs. The petitioner is not aware of the said suit or any other legal proceedings. The petitioner's father is a bonafide purchaser for valuable consideration without notice of any litigation. Hence, he filed the application to implead himself as a defendant in the suit.

6.The first respondent / plaintiff filed a counter affidavit denying all the averments made by the petitioner in his affidavit in support of petition under Order 1 Rule 10. It is averred in the

counter affidavit that the sale deed dated 05.02.1990 executed by Savithiri Ammal and Govindammal in favour of first defendant R.Ramanathan in the suit is null and void and he had lost his rights, therefore the subsequent alienees cannot derive any title from him. So he prayed for dismissal of the application.

7.The petitioner filed certified copies of the various sale deeds and settlement deed referred to in his affidavit as Exs.P1 to P6. The first respondent filed Exs.R1 to R3. The other respondents remained exparte. Before the trial Court the petitioner relied upon **AIR 2005 SC 2209** to emphasise that he is a just and necessary party to be impleaded as a defendant in the suit. The first respondent relied upon **2007 (2) CTC 562** and **2012 (8) SCC 284** to canvass his point that the petitioner's predecessors in title had purchased the property during the pendency of the suit and in violation of injunction order and he is not a necessary party to the suit. The trial Court took the view that transferee pendent lite are not entitled to be impleaded as a party.

8.The trial Court by the Fair and Decreetal order dated 26.11.2013 dismissed the application in I.A.No.3522 of 2013 filed by the Civil Revision Petitioner under Order 1 Rule 10 of C.P.C. As

against the said order, the present Civil Revision Petition is filed.

The short point for consideration is whether the impugned order is legally and factually correct and to be interfered with?

9. Heard Mr.N.Jayabalan, learned counsel appearing for the petitioner and also the learned counsel appearing for the respondents.

10. The learned counsel appearing for the petitioner relied upon the following judgments in support of his case.

(i) **2013 (2) CTC 104 (SC)** wherein Hon'ble Supreme Court of India laid down the following principle

"13. The question, therefore, that falls for consideration is as to whether if the Appellant who is the transferee pendent lite having notice and knowledge about the pendency of the Suit for Specific Performance and order of injunction can be impleaded as part under Order 1, Rule 10 on the basis of Sale Deeds executed in their favour by the Defendants-Sawhneys.

24. It is well settled that the Doctrine of *lis pendens* is a doctrine based on the ground that it is necessary for the administration of justice that the decision of a Court in a Suit should be binding not only on the litigating parties but on those who derive title *pendente lite*, the provision of this Section does not indeed annul the conveyance or the transfer otherwise, but to render it subservient to the rights of the parties to a litigation.

56. To sum up:

(1) The Appellant is not a bonafide purchaser and is, therefore, not protected against Specific Performance of the contract between the plaintiffs and the owner Defendants in the Suit.

(2) The transfer in favour of the Appellant *pendente lite* is effective in transferring title to the Appellant such title shall remain subservient to the rights of the Plaintiff in the Suit and subject to any direction which the Court may eventually pass

therein.

(3) Since the Appellant has purchased the entire estate that forms the subject matter of the Suit, the Appellant is entitled to be added as a party Defendant to the Suit.

(4) The Appellant shall as a result of his addition raise and pursue only such defences as were available and taken by the original Defendants and none other.

With the above additions, I agree with the order proposed by my Esteemed Brother, M.Y.Eqbal,J. that this Appeal be allowed and the Appellant added as Party-Defendant to the Suit in question."

(ii) **2014 4 (CTC) 814** wherein, in a batch of Civil Revision Petition the question whether the transferee pendent lite is entitled to be impleaded in the suit was referred to a larger Bench of our High Court for its decision. Based on the decision in **2013 (2) 104 SC** our Hon'ble Division bench has answered the question in affirmative and allowed all Civil Revision Petitions. It is held as follows:-

"16.In the light of the above pronouncements, we are of the view that all these Revision Petitions will have to be allowed. Merely because the sale has been effected a few years after the pendency of the suit, it would not non-Suit the purchaser pendente lite from seeking to implead himself as a party Defendant. It is also not as if the Petitioners in all these Revisions are trying to put up a different case other than the case of their vendors. There are no materials to hold the Petitioners are not the bonafide purchasers for the value. Considering the above, we are inclined to allow the Revision Petitions."

So the decision referred to above are in favour of above Civil Revision Petitioner herein.

11.That apart in page 7 of the impugned order the trial Court has stated as follows:-

"The suit was originally filed before the Hon'ble High Court Madras in C.S.No.341/1990 and subsequently transferred to this Court

after enhancement of the pecuniary jurisdiction of the Court in 1996 by Act of 28/1995 and renumbered as O.S.No.6549/1996.

The suit was posted in the list on 09.11.2000 and it was dismissed for default on 09.11.2000 and it was restored to file as per order dated 24.07.2012 by Hon'ble I Additional City Civil Judge.

Now the suit is pending for trial. At this stage this petitioner/third party filed this petition to implead him in the suit as 4th defendant."

12.Perused the typed set of papers, there was no lis from 09.11.2000 to 24.07.2012 for a period of 12 years on account of the dismissal of the suit for non-prosecution. The entire alienation covered under Exs.P2 to P6 are during the period when there was no lis on account of dismissal of the suit. The petitioner has stated all the alienation regarding 5/6th undivided share in the suit property were on 27.04.2011 under Ex.P3, 27.04.2011 under Ex.P4, 16.02.2012 under Ex.P5, 31.10.2012 under Ex.P6. Injunction order

of any nature could be only upto the date of disposal of the said suit. The suit was dismissed on 09.11.2000.

13.The suit is for declaration that the sale deed dated 05.02.1990 executed by second and third defendants in favour of the 1st defendant is null and void and other consequential relief. It appears the respondents 2, 3 and 4 in the impleading applications who are the 1st, 2nd and 3rd defendants in the suit remained exparte. So there are every chance the suit is being finalised in the absence of concerned and necessary parties to the suit. In the said circumstances, the civil revision petitioner who claims to be the owner of 5/6th share in the suit property, is just and necessary party to the suit. Exs.R1, R2 and R3 are the Xerox copies of the interim orders passed at the time of admission of the suit. The suit was in the state of dismissal from 09.11.2000 to 24.07.2012. Naturally the interim orders of any nature cannot be in force during that period. It is obvious that the properties were alienated under Exs.P3 to P6 during the period when the suit was in the state of dismissal.

14.Further the legal principles laid down in **2013 (2) CTC 104 SC** which is followed in **2014 (4) CTC 814** is applicable to the present case in hand. Therefore, the Civil Revision Petitioner is a just

and necessary party to the suit.

15. In the above circumstances, I am inclined to pass the following orders:-

(a) The Civil Revision Petition is allowed by setting aside the order in I.A.No.3522 of 2013 in O.S.No.6549 of 1996 dated 26.11.2013 on the file of the VIII Assistant Judge, City Civil Court at Chennai.

(b) Since the suit is of the year 1996, the trial Court is directed to complete the trial and to pass orders within a period of four months from the date of receipt of a copy of this order, after impleading this petitioner as 4th defendant in the suit and both side parties are hereby directed to co-operate for the early disposal of the suit.

16. Hence, the Civil Revision Petition is allowed with the above terms. Consequently, connected miscellaneous petition is closed. No costs.

02.09.2016

vs

Index:Yes/No.
Internet:Yes/No.

To

The VIII Assistant Judge,
City Civil Court, Chennai.

M.V.MURALIDARAN, J.

vs

**PRE-DELIVERY ORDER MADE IN
CRP(PD)No.28 of 2014
and
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